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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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12 NOE CORRAL,) No. CV 12-5474-VAP(CW)
13)
14 Plaintiff,) ORDER OF DISMISSAL
15 v.)
16 MICHAEL J. ASTRUE, Comm'r)
17 of Social Security Admin.,)
18 Defendant.)
19

20 For reasons stated below, this action is dismissed for failure
21 to prosecute and failure to comply with court orders.

22 BACKGROUND

23 On June 22, 2012, Plaintiff Noe Corral, who is pro se,
24 submitted a request to proceed in forma pauperis and a complaint
25 challenging a denial of benefits by the Commissioner of Social
26 Security. The request was granted and the complaint filed on July
27 3, 2012. On July 11, 2012, the court issued an initial order
28 detailing court filing procedures. The order advised Plaintiff
that, among other things, he was required to serve the summons and

1 complaint as described and then to file a proof of service with the
2 court. [Docket no. 6.]

3 Plaintiff did not file a proof of service with the court or
4 otherwise respond to that order. On December 19, 2012, the court
5 ordered Plaintiff to file a notice of intent to proceed on or
6 before January 7, 2013, and advised Plaintiff that should he fail
7 to comply this action was subjected to dismissal without prejudice
8 for failure to prosecute. [Docket no. 7.]

9 Plaintiff has not responded to the December 19, 2012, order.

10 **DISCUSSION**

11 It is well established that district courts have authority to
12 dismiss actions for failure to prosecute or to comply with court
13 orders. See Fed. R. Civ. P. 41(b); Link v. Wabash Railroad Co.,
14 370 U.S. 626, 629-30, 82 S. Ct. 1386, 8 L. Ed. 2d 734
15 (1962) (dismissal for failure to prosecute to avoid undue delay or
16 congestion in court calendars); Ferdik v. Bonzelet, 963 F.2d 1258,
17 1260 (9th Cir. 1992) (dismissal for failure to comply with any court
18 order).

19 In deciding whether to dismiss for failure to prosecute or to
20 comply with court orders, a court should consider five factors: (1)
21 the public interest in expeditious resolution of litigation; (2)
22 the court's need to manage its docket; (3) the risk of prejudice to
23 defendants; (4) the public policy favoring disposition of cases on
24 the merits; and (5) the availability of less drastic sanctions.
25 See In re Eisen, 31 F.3d 1447, 1451 (9th Cir. 1994) (failure to
26 prosecute); Ferdik, 963 F.2d at 1260-61 (9th Cir. 1992) (failure to
27 comply with court orders).

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1 Consideration of these factors tips in favor of dismissal
2 here.

3 The first two factors - public interest in expeditious
4 resolution of litigation and the court's need to manage its docket
5 - weigh in favor of dismissal. Plaintiff has not prosecuted this
6 action by filing a proof of service reflecting that process was
7 served or complied with the court's orders by filing a response
8 that indicates an intent to proceed in this action.

9 The third factor -- prejudice to defendant -- also weighs in
10 favor of dismissal. A rebuttable presumption of prejudice to a
11 defendant arises when a plaintiff unreasonably delays prosecution
12 of an action. Eisen, 31 F.3d at 1452-53. Nothing suggests that
13 such a presumption is unwarranted in this case.

14 The fourth factor - public policy in favor of deciding cases
15 on the merits - ordinarily weighs against dismissal. However, it
16 is a plaintiff's responsibility to move towards disposition at a
17 reasonable pace and avoid dilatory and evasive tactics. See Morris
18 v. Morgan Stanley, 942 F.2d 648, 652 (9th Cir. 1991). Plaintiff
19 has not discharged this responsibility, despite having been advised
20 of his responsibilities, afforded sufficient time in which to
21 discharge them, and warned of the consequences of failure to do so.
22 In these circumstances, the policy favoring resolution of disputes
23 on the merits does not outweigh Plaintiff's failure to comply with
24 court orders and procedures.

25 The fifth factor - availability of less drastic sanctions -
26 also weighs in favor of dismissal. The court cannot move the case
27 toward disposition without Plaintiff's compliance with court orders
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1 or participation in this litigation. Plaintiff has shown that he
2 is either unwilling or unable to prosecute his complaint or to
3 comply with court orders. Other possible sanctions for Plaintiff's
4 failures do not reasonably appear likely to assure future
5 compliance. Dismissal of this action without prejudice is
6 therefore warranted.

7 **ORDERS:**

8 Accordingly, the above-entitled action is dismissed without
9 prejudice for failure to comply with court orders and failure to
10 prosecute. The Clerk of the Court shall serve this Order and the
11 Judgment herein on all parties of record.

12
13 DATED: February 5 2013

14 Virginia A. Phillips
15 VIRGINIA A. PHILLIPS
United States District Judge

16 Presented by:
17 Dated: January 31, 2013

18 Carla M. Woehrle
19 CARLA M. WOHRLE
United States Magistrate Judge